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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Applicant: Ralph M. Fay et al
Application No. 10/678,911
Filed: October 3, 2003
For: TABLESS FACED INSULATION ASSEMBLY

Art Unit: 1772

Marc A. Patterson
Examiner

April 10, 2007

APPELLANT'S BRIEF ON APPEAL
UNDER 37 C.F.R. SECTION 41.37(c)

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Appellants hereby file an amended appeal brief, in response to the office action dated July 19, 2007, appealing the decision of the Examiner as set forth in the Office Action dated October 20, 2005, wherein the Examiner rendered a final rejection of claim 56.

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I. REAL PARTY IN INTEREST

Johns Manville International, Inc., having a place of business at 717 17th Street, Denver, Colorado, 80202, is the assignee of the subject patent application.

II. RELATED APPEALS AND INTERFERENCES

There are no other appeals, interferences or judicial proceedings or decisions, known to Appellants, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claim 56 is pending in the application. Appellant hereby appeals the rejection of claim 56.

IV. STATUS OF AMENDMENTS

Appellant's amendment filed on February 17, 2006 has been entered.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Claim 56 is directed to a faced building insulation assembly 820 that is principally described from page 23, line 26 to page 25, line 1 of the specification and shown in Figures 19 and 20 of the drawings. The faced building insulation assembly 820 includes a resilient fibrous insulation layer 824 and a facing sheet 822. As stated on page 20, lines 1 to 8, the elements of the faced insulation assemblies of Figures 9 to 22 that correspond to those of Figures 1 to 3 will have corresponding reference numerals in the hundreds with the same last two digits as the reference numerals used for those elements in Figures 1 to 3.

The resilient fibrous insulation layer 824 has a length of about 46 inches or more (page

8, line 15), an uncompressed width of about 15 inches or more (page 8, line 19), and a thickness of about 3 inches or more (page 8, line 31). The resilient fibrous insulation layer 824 has lateral surfaces defined by the length and thickness of the resilient fibrous insulation layer. The resilient fibrous insulation layer 824 has a first surface 826 and a second surface that are each defined by the length and width of the resilient fibrous insulation layer 824 (page 6, lines 27 to 29) and that each extend between the lateral surfaces of the resilient fibrous insulation layer. The first surface 826 of the resilient fibrous insulation layer 824 has longitudinally extending lateral edge portions adjacent the lateral surfaces of the resilient fibrous insulation layer that are at least 0.25 inches in width (page 24, lines 10 to 17). The resilient fibrous insulation layer 824 is compressible in the direction of its width from the uncompressed width to a lesser width (page 23, lines 29 to 35).

The facing sheet 822 has no folds therein as shown in Figures 19 and 20 and is fungi growth resistant (page 2, line 11). The facing sheet 822 has a first outer surface and a second inner surface. The second inner surface of the facing sheet 822 is bonded to the first surface 826 of the resilient fibrous insulation layer 824 by a bonding layer 836 (page 24, lines 10 to 12). The facing sheet 822 overlies and is substantially coextensive with the first surface 826 of the resilient fibrous insulation layer 824 and has lateral edge portions 896 overlying but not bonded to the lateral edge portions of the first surface 826 of the resilient fibrous insulation layer 824 so that, when the resilient fibrous insulation layer 824 is compressed to the lesser width, the lateral edge portions 896 of the facing sheet 822 extend as tabs beyond the lateral surfaces of the resilient fibrous insulation layer 824 (page 24, lines 10 to 17 and lines 27 to 33).

The facing sheet 822 and the resilient fibrous insulation layer 824 are separable longitudinally by hand to separate the faced building insulation assembly 820 into faced insulation sections 890 having lesser widths than the uncompressed width of the faced building

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insulation assembly 820 (page 23, line 35 to page 24, line 6). The bonding layer 836 is omitted from portions 898 of the facing sheet 822 located adjacent where the resilient fibrous insulation layer 824 is separable (lines 892) so that the facing sheet 822 is not bonded to the resilient fibrous insulation layer 824 where the facing sheet 822 and the resilient fibrous insulation layer 824 are longitudinally separable to form the faced insulation sections 890 (page 24, lines 17 to 27).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claim 56 has been rejected under 35 U.S.C. Section 103(a) as being unpatentable over Walter, U.S. Patent No. 3,140,220 (hereinafter, "the Walter patent") in view of Ruid, U.S. Patent No. 6,231,927 B1 (hereinafter, "the Ruid patent") and Schwartz, U. S. Patent No. 2,786,004 (hereinafter, "the Schwartz patent"). The issue on appeal may be stated as follows:

whether claim 56 is unpatentable under 35 U.S.C. Section 103(a) over the Walter patent in view of the Ruid patent and the Schwartz patent.

VII. ARGUMENT

ARGUMENT RELATING TO THE REJECTION OF CLAIM 56

The Walter patent discloses a thermal insulation assembly wherein a facing 14 is bonded to a surface of a fibrous insulation and has tabs 16 and 17 that are not bonded to the surface of the insulation and that do not extend beyond the sides of the insulation unless the insulation is compressed in the direction of its width. However, the Walter patent, unlike the faced building insulation assembly of claim 56, does not disclose or suggest a thermal insulation assembly wherein: a) the facing sheet and the resilient fibrous insulation layer of the insulation assembly are separable longitudinally by hand to separate the insulation assembly into faced insulation sections having lesser widths than the uncompressed width of the insulation assembly; and b) the facing sheet is not bonded to the resilient fibrous insulation layer where the facing sheet and the resilient fibrous insulation layer are longitudinally separable to form the faced insulation sections. This structure enables the faced insulation assemblies of the subject invention to be used at their initial width to insulate standard width building construction cavities or to be separated into faced sections of lesser widths, without the need to use a cutting tool to slit the facing and insulation layer, to insulate nonstandard building construction cavities of lesser widths.

With regard to the limitations of claim 56 discussed above, the portion of the Walter patent disclosure referred to in the rejection in col. 5, lines 15 to 19 is part of the disclosure in that patent that illustrates the method of manufacturing the faced insulation assembly of Figure 1. The method of making the faced insulation assembly of Figure 1, is disclosed in the Walter patent in col. 5, lines 1 to 56, and shown in the Figures 5 to 8. It is conventional practice in the insulation industry to form wide fibrous insulation blankets on a production line similar to blanket 55 (e.g. blankets about 10 to 12 feet in width) and then slit such blankets on the production line with rotary disks or saws to form a plurality of individual faced insulation assemblies those shown in Figures 1 and 9 that have a width intended to fit in standard width building construction cavities (e.g. cavities defined by studs, joists, etc. on 16 or 23 inch centers). The Walter patent does not disclose or suggest making a faced insulation assembly, such as that set forth in claim 56 and shown in Figures 19 to 21 of the subject patent application wherein: a) the facing sheet and the resilient fibrous insulation layer of the insulation assembly are separable longitudinally by hand to separate the insulation assembly into faced insulation sections having lesser widths than the uncompressed width of the insulation assembly; and b) the facing sheet is not bonded to the resilient fibrous insulation layer where the facing sheet and the resilient fibrous insulation layer are longitudinally separable to form the faced insulation sections. Instead, the Walter patent discloses faced insulation assemblies, shown in Figures 1 and 9, of that patent wherein the facing sheets14 and 72 and the insulation layers 10 and 71 of the finished products are not separable longitudinally by hand into faced insulation sections of lesser widths than the faced insulation assemblies of Figures 1 and 9 and the facing sheets 14 and 72 are bonded to the insulation layers across the width of the insulation layers from tab 16 to tab 17 and tab 75 to tab 75.

The Ruid patent discloses grooved insulation boards that are used to form air conveying ducts and have lengths greater than 46 inches and widths greater than 15 inches, but does not otherwise supplement the disclosure of the Walter patent relative to the structure of the subject invention as set forth in claim 56.

Schwartz et al discloses a thermal insulation wherein the front, back and intermediate sheets 1, 2, and 3, preferably, are treated with a fungus retarding agent, but does not otherwise supplement the disclosure of the Walter patent and the Ruid patent relative to the structure of the subject invention as set forth in claim 56.

In view of the arguments presented by Appellants with respect to the patentability of claim 56, Appellants respectfully request the Board of Patent Appeals and Interferences to reverse the rejection of and allow claim 56.

Respectfully submitted,

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CLAIMS APPENDIX

56. A faced building insulation assembly, comprising:

a resilient fibrous insulation layer; the resilient fibrous insulation layer having a length of about 46 inches or more, an uncompressed width of about 15 inches or more, and a thickness of about 3 inches or more; the resilient fibrous insulation layer having a longitudinally extending centerline; the insulation layer having lateral surfaces defined by the length and thickness of the resilient fibrous insulation layer; the resilient fibrous insulation layer having first and second surfaces defined by the length and width of the resilient fibrous insulation layer and extending between the lateral surfaces of the resilient fibrous insulation layer; the first surface of the resilient fibrous insulation layer having longitudinally extending lateral edge portions adjacent the lateral surfaces of the resilient fibrous insulation layer that are at least 0.25 inches in width; the resilient fibrous insulation layer being compressible in the direction of its width from the uncompressed width to a lesser width;

a facing sheet with no folds therein; the facing sheet being fungi growth resistant; the facing sheet having a first outer surface and a second inner surface; the second inner surface of the facing sheet being bonded to the first surface of the resilient fibrous insulation layer; the facing sheet overlying and being substantially coextensive with the first surface of the resilient fibrous insulation layer and having lateral edge portions overlying but not bonded to the lateral edge portions of the first surface of the resilient fibrous insulation layer so that, when the resilient fibrous insulation layer is compressed to the lesser width, the lateral edge portions of the facing sheet extend as tabs beyond the lateral surfaces of the resilient fibrous insulation layer; and the facing sheet and the resilient fibrous insulation layer being separable longitudinally by hand to separate the faced building insulation assembly into faced insulation sections having lesser widths than the uncompressed width of the faced building insulation assembly; and the facing sheet not being bonded to the resilient fibrous insulation layer where the facing sheet and the resilient fibrous insulation layer are longitudinally separable to form the faced insulation sections.

EVIDENCE APPENDIX

No evidence has been entered in the record by the examiner.

RELATED PROCEEDINGS APPENDIX

There are no other appeals, interferences, or judicial proceedings or decisions, known to Appellant, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

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I hereby certify that the documents stated below are being transmitted to the Central Facsimile Number of the U.S. Patent and Trademark Office, Fax No. 571.273.8300 on 8-15-2007

Doris Swick
Name of Depositor

Signature

8-15-2007
Date of Deposit

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(303) 978-2000

Case Docket No. 7227-1C
Date: August 15, 2007

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PO Box 1450
Alexandria, VA 22313-1450

Re: Application of: Fay et al
Serial No.: 10/678,911
Filed: October 3, 2003
For: TABLESS FACED INSULATION ASSEMBLY

Art Unit: 1772
Examiner: PATTERSON, Marc A

Transmitted herewith is/are the following document(s) related to the above-identified application:

[ ] Notice of Appeal

[X] Appeal Brief (10 pages)

[ ] Request for Oral Hearing

Please extend the time for filing the Notice of Appeal _____ ( ) month to _______________.

The fee has been calculated as shown below:

Notice of Appeal	$500.00	
Appeal Brief	$500.00	500.00
Request for Oral Hearing	$1000.00	
Fee for Extension of Time		
1 month $120.00, 2 months $450.00, 3 months $1020.00		
	Total	500.00

[X] Charge $500.00 to Deposit Account No. 10-0625.

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